FARAD CONTINUATION SHEET NO.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
NAGPUR BENCH, NAGPUR

Second Appeal No. 603/2004

Appeal	District :
Application No.	of 200
Writ petition	

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders.	Court's or Judge's orders

CORAM : Smt. V. A. Naik, J.
DATED : April 11, 2007.

Heard Shri Chandurkar for the appellant, and Shri Khajanchi for the respondent no.1.

The appellant is the original defendant no.1. A suit was filed by the plaintiff/respondent no. 1 for partition and separate share in the suit property. According to the plaintiff, the plaintiff was the son of Latkuji and the defendant no.1 was the son of Marotrao. It is the case of the plaintiff that Latkuji and Marotrao were real brothers and the suit properties were jointly purchased by Latkuji and Marotrao. The plaintiff, therefore, sought partition and separate possession of the suit properties.

The defendants denied the claim of the plaintiff and submitted that the suit properties were purchased by Marotrao only. They denied the claim of the plaintiff that the suit properties were the joint properties of Latkuji and Marotrao. It was further pleaded by the defendants that plaintiff Nana who was the son of Latkuji had relinquished his share in the suit property in favour of Moreshwar, the defendant no.1. The defendants, therefore, prayed for dismissal of the

civil suit.

Trial and the appellate Courts, however, on consideration of the evidence tendered by the parties on record, came to a conclusion that the suit property was the joint property of Latkuji and Marotrao. The Courts held that the plaintiff proved that he had half share in the suit property and the defendants had failed to prove that the suit property was the self acquired property of Marotrao. The Courts further held that the defendants had failed to prove the relinquishment of the share of the plaintiff in the year 1981.

The counsel for the appellant submitted that the documentary evidence as well as the circumstances on record clearly showed that the plaintiff had relinquished his share in the suit property in favour of the defendant no.1 in the year 1981. According to the counsel for the appellant, the defendant no.1 was entitled to sell the suit land by the sale deed dated 13th May, 1983 in favour of defendant no.4, as the defendant no.1 was the full owner of the suit property. The counsel for the appellant relied on the entries in the revenue records to substantiate the aforesaid submissions on the issue of relinquishment of share.

The submissions made on behalf of the appellant are liable to be rejected mainly on the ground that the defendants had specifically pleaded in the written statement that the property was the self-acquired property of Marotrao and was not jointly purchased by Latkuji and Marotrao. Once this plea was raised in the written statement, a totally contradictory plea that the plaintiff had relinquished his share in the

suit property in favour of the defendant no.1, could not have been raised by the defendants. It is further noticeable that the plaintiff was away from the village wherein the lands were situated, for a number of years as he was serving in Mumbai and, therefore, the defendant no.1 was looking after the lands in question.

The Courts have categorically recorded that the revenue authorities had not issued notice to the plaintiff before correcting the revenue entries. Admittedly, the earlier entry recorded the names of both Latkuji and Marotrao as owners of the suit property.

For the aforesaid reasons and also for the reasons recorded by both the Courts, the judgments passed by both the Courts cannot be interfered with in this second appeal.

Since no substantial question of law arises for consideration in this second appeal, same is dismissed with no order as to costs.

JUDGE

RMP